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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROBERT TITUS, JR.,

12 Plaintiff,

13 v.
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15 CITY OF LA MESA, et al.,

16 Defendants.

Case No. 13-cv-1909-W (KSC)

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS [DOC. 3] AND
STRIKING REQUEST FOR
PUNITIVE DAMAGES
AGAINST DEFENDANT CITY
OF LA MESA**

17 Pending before the Court is a motion to dismiss under Federal Rule of Civil
18 Procedure 12(b) (6) filed by Defendants City of La Mesa, and Officers D. Perry and B.
19 Wright. Plaintiff opposes.

20 The Court decides the matter on the papers submitted and without oral
21 argument. See Civ. L.R. 7.1(d.1). For the following reasons, the Court **DENIES**
22 Defendants' motion to dismiss [Doc. 3], but **ORDERS** the request for punitive damages
23 against Defendant City of La Mesa **STRUCK**.

24
25 **I. BACKGROUND**

26 On May 31, 2011, an Albertson's grocery store located in La Mesa, California
27 was robbed by an African American male wearing predominantly red clothing. (*Compl.*
28

1 [Doc. 1], ¶ 6.) On or about July 26, 2011, another Albertson's grocery store in La Mesa
2 was robbed by an African American male wearing predominantly red clothing. (*Id.*)

3 La Mesa Police Detective, Defendant D. Perry, investigated the robberies.
4 (*Compl.*, ¶ 7.) Because the robberies were committed by someone wearing
5 predominately red clothing, Detective Perry believed the suspect was a gang member.
6 (*Id.*) Detective Perry, therefore, sought the assistance of Defendant B. Wright, who was
7 a La Mesa Police Department Special Enforcement Detail Officer. (*Id.*)

8 Officer Wright obtained photographs of African American males that lived in the
9 La Mesa area, including the Department of Motor Vehicles photograph of Plaintiff
10 Robert Titus, Jr. (*Compl.*, ¶ 8.) According to the Complaint, although Defendant
11 knew that Titus was not a gang member, on August 17, 2011, Titus was arrested and
12 charged with both robberies based on his photograph. (*Id.*, ¶ 9.) During his arrest,
13 Defendants did not find red clothing at Titus' home. (*Id.*)

14 On August 16, 2013, Titus filed this lawsuit alleging equal protection and false
15 arrest under 42 U.S.C. § 1983, and a Monell violation under 42 U.S.C. § 1983.
16 Defendants' motion to dismiss raises three issues: (1) whether the Officer Defendants
17 are entitled to qualified immunity because there was probable cause to arrest Titus;
18 (2) whether Titus has stated a claim for equal protection violation; and (3) whether
19 Titus has stated a Monell claim.

20 21 **II. LEGAL STANDARD**

22 The court must dismiss a cause of action for failure to state a claim upon which
23 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule
24 12(b)(6) tests the legal sufficiency of the complaint. Navarro v. Block, 250 F.3d 729,
25 732 (9th Cir. 2001). The court must accept all allegations of material fact as true and
26 construe them in light most favorable to the nonmoving party. Cedars-Sinai Med. Ctr.
27 v. Nat'l League of Postmasters of U.S., 497 F.3d 972, 975 (9th Cir. 2007). Material
28 allegations, even if doubtful in fact, are assumed to be true. Bell Atl. Corp. v. Twombly,

1 550 U.S. 544, 555 (2007). However, the court need not “necessarily assume the truth
 2 of legal conclusions merely because they are cast in the form of factual allegations.”
 3 Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003) (internal
 4 quotation marks omitted). In fact, the court does not need to accept any legal
 5 conclusions as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

6 Generally, courts may not consider material outside the complaint when ruling
 7 on a motion to dismiss. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d
 8 1542, 1555 n.19 (9th Cir. 1990). However, documents specifically identified in the
 9 complaint whose authenticity is not questioned by parties may also be considered.
 10 Fecht v. Price Co., 70 F.3d 1078, 1080 n.1 (9th Cir. 1995) (superceded by statutes on
 11 other grounds). Moreover, the court may consider the full text of those documents,
 12 even when the complaint quotes only selected portions. Id. It may also consider
 13 material properly subject to judicial notice without converting the motion into one for
 14 summary judgment. Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir. 1994).

16 III. DISCUSSION

17 A. The contents of Officer’s Narrative Report are not properly subject to 18 judicial notice.

19 In support of their motion, Defendants request judicial notice of a San Diego
 20 Regional Officer’s Report Narrative. (See RJN [Doc. 3-3], ¶ 1.) The report suggests
 21 that Titus was not arrested simply because he is African American, but because a
 22 witness identified him pursuant to 6-person photo line-up. (*Id.*, Ex. 1 [Doc. 3-4] at 1.)

23 As stated above, on a motion to dismiss, courts may not consider material outside
 24 the complaint. Hal Roach Studios, 896 F.2d at 1555 n.19. Defendant argue, however,
 25 that because the Complaint refers to Titus’ photograph, the Court may consider the
 26 report because it includes the photograph. The Court is not persuaded for two reasons.

27 First, the Complaint refers to a California Department of Motor Vehicles
 28 (“DMV”) photograph of Titus. The document for which Defendants request judicial

1 notice is not a DMV photograph, but instead is the Officer's report with an attached
 2 six-person photo line up. Second, "the existence and content of a police report are not
 3 properly the subject of judicial notice." United States v. Ritchie, 342 F.3d 903, 909
 4 (9th Cir. 2003). Because the police report is not subject to judicial notice and is outside
 5 the four-corners of the Complaint, the Court **SUSTAINS** Titus' objection.

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 7 **B. The Complaint's allegations do not establish as a matter of law that**
 8 **probable cause existed to arrest Titus.**

9 The Officer Defendants argue that they are entitled to qualified immunity
 10 because they had probable cause to arrest Titus. "The doctrine of qualified immunity
 11 protects government officials 'from liability for civil damages insofar as their conduct
 12 does not violate clearly established statutory or constitutional rights of which a
 13 reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231
 14 (2009). "Qualified immunity balances two important interests—the need to hold public
 15 officials accountable when they exercise power irresponsibly and the need to shield
 16 officials from harassment, distraction, and liability when they perform their duties
 17 reasonably." Id.

18 In evaluating qualified immunity, the Court must evaluate two issues. First,
 19 whether the facts show the violation of a constitutional right. Saucier v. Katz, 533 U.S.
 20 194, 201 (2001). Second, whether the right was "clearly established" at the time of
 21 defendant's misconduct. Id. "Qualified immunity is applicable unless the official's
 22 conduct violated a clearly established constitutional right." Pearson, 555 U.S. at 232.

23 "Probable cause exists when, under the totality of the circumstances known to
 24 the arresting officers (or within the knowledge of the other officers at the scene), a
 25 prudent person would believe the suspect had committed a crime." Blankenhorn v.
 26 City of Orange, 485 F.3d 463, 471 (9th Cir. 2007) (citing Dubner v. City & Cnty. of
 27 San Francisco, 266 F.3d 959, 966 (9th Cir. 2001)). Probable cause to arrest is based on
 28 an objective standard. U.S. v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007). Thus,

1 “[p]robable cause exists when, at the time of arrest, the agents know reasonable
 2 trustworthy information sufficient to warrant a prudent person in believing that the
 3 accused had committed or was committing an offense.” Allen v. City of Portland, 73
 4 F.3d 232, 237 (9th Cir. 1995); Aguilera v. Baca, 394 F. Supp. 2d 1203, 1214 (C.D. Cal.
 5 2005) (“Probable cause exists when the facts and circumstances within the officer’s
 6 knowledge are sufficient to warrant a prudent person to believe that the suspect has
 7 committed, is committing, or is about to commit an offense.”) (internal quotations and
 8 citation omitted).

9 As an initial matter, it is important to again emphasize that on a 12(b)(6)
 10 motion, courts must accept the facts as alleged in the Complaint as true. Additionally,
 11 for the reasons stated above, the Officer’s report cannot be considered on the present
 12 motion. Based on these limitations, the issue presented by Defendants’ motion to
 13 dismiss is essentially whether there was probable cause to arrest Titus under the
 14 following circumstances: (1) he was African American; and (2) although the Defendant
 15 Officers believed the suspect was in a gang, they knew Titus was not a gang member.
 16 (*Compl.*, ¶¶ 9, 10.) The Court finds based on these limited facts, probable cause did not
 17 exist and thus the Officer Defendants are not entitled to a finding of qualified immunity
 18 at this stage in the litigation.

19 Defendants nevertheless contend that John v. City of El Monte, 515 F.3d 936
 20 (9th Cir. 2008) and Peng v. Penghu, 335 F.3d 970 (9th Cir. 2003) support a finding of
 21 probable cause. But in both cases, the arrests were based on witness statements that
 22 identified the plaintiffs as the suspects. Here, although the Officer’s report suggests that
 23 Titus’ arrest was based on a witness statement and identification, the Complaint does
 24 not. Accordingly, neither John nor Peng assist Defendants on the instant motion.¹

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 28 ¹ The Court also notes that John and Peng both involved summary-judgment motions,
 which allowed the courts to consider evidence that was properly before the courts.

1 **C. Titus' remaining claims are sufficiently pled.**

2 Defendants contend that Titus has failed to state a claim for equal protection
3 violation because he has not alleged a discriminatory intent. But Titus alleges that
4 Defendants believed the suspect was a gang member (based on his clothing), knew
5 Titus was not a gang member, yet arrested Titus based solely on the fact that he is
6 African American. Because at this stage the Court must accepted these allegations as
7 true, the Court finds Titus has stated an equal protection claim.

8 Defendants also contend that Titus failed to state a Monell claim. However, the
9 Complaint specifically alleges that Titus' arrest was pursuant to the La Mesa Police
10 Department's custom and policy. For purposes of evaluating a motion to dismiss, the
11 Court finds Titus has also stated a Monell violation.

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13 **D. Titus has conceded that he is not entitled to punitive damages against**
14 **the City.**

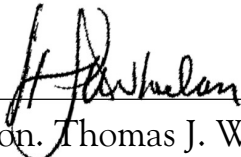
15 Defendants argue that Defendant City of La Mesa cannot be held liable for
16 punitive damages. Titus concedes this issue in his opposition.

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18 **IV. CONCLUSION & ORDER**

19 In light of the foregoing, the Court **DENIES** Defendant's motion to dismiss [Doc.
20 3], but **ORDERS** the request for punitive damages against Defendant City of La Mesa
21 **STRUCK** from the Complaint.

22 **IT IS SO ORDERED.**

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24 **DATE: May 13, 2014**

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26 _____
27 Hon. Thomas J. Whelan
28 United States District Judge